

BellSouth Telecommunications, Inc.  
2101  
333 Commerce Street  
Nashville, Tennessee 37201-3300

615 214-6311  
Fax 615 214-7406

Patrick Turner  
Attorney

October 20, 2000

**VIA HAND DELIVERY**

Mr. David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

Re: *Discount Communications, Inc.*  
Docket No. 00-00230

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Response to Discount's Request to Continue Escrow Amount Pending Decision on Petition to Reconsider and Request for a New Escrow Arrangements. A copy of the enclosed is being provided to counsel of record.

Very truly yours,



Patrick W. Turner

PWT/jem

Enclosure

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**In Re:       *Discount Communications, Inc.***

**Docket No. 00-00230**

**BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE  
TO DISCOUNT'S REQUEST TO CONTINUE ESCROW AMOUNT  
PENDING DECISION ON PETITION TO RECONSIDER  
AND REQUEST FOR A NEW ESCROW ARRANGEMENT**

Discount's plea that the Tennessee Regulatory Authority ("TRA") "preserve the status quo," *see* Request to Continue Escrow Amount at 1, is a classic request for equitable relief. Under Tennessee law, however, "[h]e who comes into a court of equity asking its aid, must come with clean hands," *Brandon v. Wright*, 838 S.W.2d 532, 534 (Tenn. Ct. App. 1992), and as explained below, Discount's hands are far from clean.<sup>1</sup> The TRA, therefore, should deny Discount's request for equitable relief. Moreover, instead of seeking to continue an approach which ignores Discount's debt, Discount should demonstrate a good-faith willingness to pay its debts (which it has not demonstrated to this point) by accepting BellSouth's

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<sup>1</sup> BellSouth's Petition for Reconsideration addresses Discount's growing debt, and Discount's response to that Petition objects to the discussion as being prejudicial and irrelevant. Response at 3. Before BellSouth filed its Petition, however, Discount's counsel had repeatedly informed BellSouth that Discount would ask the TRA to require the parties to "continue" the expired escrow arrangement. More importantly, at the time Discount's Response was filed, Discount had indeed filed such a request with the TRA. The "Status of Discount's Debt" discussion clearly is relevant to that request, and it is prejudicial only in the sense that it shows that Discount's hands are not clean. Discount's statements in its Response, therefore, are both misleading and meritless.

proposal set forth below. It goes without saying, of course, that Discount also should pay its future bills as they come due.

**I. THE TRA SHOULD REJECT THE ESCROW ARRANGEMENT REQUESTED BY DISCOUNT.**

The parties agreed to the escrow arrangement in this docket -- it was not imposed by the TRA. The fact that the agreed arrangement has expired is evidenced by Discount's release of the escrow funds to BellSouth and by Discount's plea that the TRA "continue" -- as opposed to "enforce" -- the escrow arrangement. Request at 1. BellSouth, therefore, is not obligated to continue the expired arrangement and, for the reasons explained below, BellSouth does not agree to the arrangement proposed by Discount.

Discount, for instance, did not honor the escrow arrangement to which it had agreed until the Hearing Officer ordered it to do so.<sup>2</sup> Moreover, although Discount has paid \$265,000 into the escrow account, it has incurred more than \$390,000 in bills over the same time period (and this amount excludes charges for directory assistance). The escrow arrangement, therefore, has resulted in Discount's debt to BellSouth increasing by more than \$125,000 from April to October. Today, even after subtracting all directory assistance charges Discount has ever been billed by BellSouth, Discount has a past-due balance of \$237,543.09.

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<sup>2</sup> Discount's statement that "[o]n April 5, 2000, the parties agreed that the law firm of Boulton, Cummings, Conners & Berry, PLC, would hold the escrow account" is not quite accurate. The Pre-Hearing Officer ordered Discount to make payments into an escrow account held by that firm after BellSouth showed that Discount was not complying with Paragraph 4 of the Compromise Agreement. See Transcript of April 5, 2000 Proceedings Before the Pre-Hearing Officer at 16-18.

Finally, despite BellSouth's efforts to have Discount address this debt, Discount has simply refused to do so. On at least two occasions since the hearings on this docket, BellSouth has asked Discount to provide documentation supporting any disputes Discount purports to have regarding this past-due amount. See Exhibits 1 and 2. To this day, Discount has provided absolutely no such documentation. Moreover, BellSouth has repeatedly asked Discount to discuss arrangements for the payment of its debts to BellSouth, but Discount has refused to do so. Finally, BellSouth has asked Discount to make arrangements for Discount and BellSouth to jointly discuss with Discount's bank the status of two \$13,300 payments Discount claims to have paid BellSouth, see Exhibit 2, but Discount has never made such arrangements.

Discount does not have clean hands. It cannot, therefore, seek any equitable relief from the TRA. *Brandon v. Wright*, 838 S.W.2d 532, 534 (Tenn. Ct. App. 1992) ("[H]e who comes into a court of equity asking its aid, must come with clean hands."). Accordingly, the TRA should deny Discount's request.

**II. DISCOUNT SHOULD ACT IN GOOD FAITH BY PAYING THE PAST-DUE AMOUNT OF ITS ACCOUNT INTO ESCROW AS PROVIDED BELOW.**

Enough is enough. It is high time for Discount to address its debts in good faith. BellSouth, therefore, proposes the following arrangement. Discount should immediately pay the \$237,543.09 past-due balance on its account into an escrow account maintained by an appropriate escrow agent.<sup>3</sup> Discount should then be

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<sup>3</sup> This amount represents the past-due amount after subtracting all directory assistance charges. This is not an admission that Discount is not required to pay for directory assistance, nor is it a waiver of BellSouth's arguments supporting its

given seven days to file documentation supporting any purported disputes over this debt. To the extent that the amount in the escrow account exceeds the amount of disputes documented in this manner, that amount should be released to BellSouth on the eighth day. The TRA should then hold a hearing to address any documented disputes and resolve this billing dispute once and for all.

### **CONCLUSION**

BellSouth has tried it Discount's way, and things have gotten worse, not better. BellSouth, therefore, will not agree to Discount's proposal, and the TRA should deny the relief requested by Discount. Rather than asking the TRA to do anything, Discount should demonstrate a good-faith willingness to pay its debts (which it has not demonstrated to this point) by accepting BellSouth's proposal set forth below. It goes without saying, of course, that Discount also should pay its future bills as they come due.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: Patrick Turner

Guy M. Hicks

Patrick W. Turner

333 Commerce Street, Suite 2101

Nashville, Tennessee 37201-3300

(615) 214-6301

233072

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position that Discount is required to pay for directory assistance. Instead, it is a good faith recognition of the terms of the TRA's Order in this docket and of the fact that BellSouth may pursue these directory assistance charges if that decision is changed on reconsideration or on appeal.

**CERTIFICATE OF SERVICE**

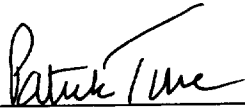
I hereby certify that on October 20, 2000, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☐ Hand
- ☒ Mail
- ☒ Facsimile
- ☐ Overnight

Henry Walker, Esquire  
Boult, Cummings, Conners & Berry  
414 Union Avenue, #1600  
Post Office Box 198062  
Nashville, Tennessee 37219-8062

- ☐ Hand
- ☒ Mail
- ☒ Facsimile
- ☐ Overnight

Vance Broemel, Esquire  
Consumer Advocate Division  
426 Fifth Avenue North  
Nashville, Tennessee 37243-0500

  
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**ATTACHMENT 1**



BellSouth Telecommunications, Inc.  
2101  
333 Commerce Street  
Nashville, Tennessee 37201-3300

615 214-6311  
Fax 615 214-7406

Patrick Turner  
Attorney

August 25, 2000

**VIA TELECOPIER  
(615) 252-6363**

Henry Walker, Esquire  
Boult, Cummings, Conners & Berry  
414 Union Street, Suite 1600  
Post Office Box 198062  
Nashville, Tennessee 37219-8062

Re: Discount Communications, Inc.  
Docket No. 00-00230

Dear Henry:

Attached are the final versions of the Proposed Settlement Agreement and the Petition for Approval of Amendment to Resale Agreement Negotiated Between BellSouth Telecommunications, Inc. and Discount Communications Pursuant to the Telecommunications Act of 1996. I would like to confirm my understanding that Discount has agreed to the terms of these documents and that all we are waiting on now is for Discount to provide documentation: (1) supporting its claims for the \$4040 in promotional credits referenced in paragraph 3(B) of the Proposed Settlement Agreement; (2) showing which Discount Link-up end users who signed on after April 12, 2000 and before August 1, 2000 did not get any Link-up credit; and (3) showing the total number of Link-up end users Discount has signed up to date. If my understanding is not correct, please notify me immediately.

Sincerely,

A handwritten signature in black ink that reads "Patrick W. Turner". The signature is written in a cursive, flowing style.

Patrick W. Turner

PWT/jem

Enclosure



## **ATTACHMENT 2**



BellSouth Telecommunications, Inc.  
2101  
333 Commerce Street  
Nashville, Tennessee 37201-3300

615 214-6311  
Fax 615 214-7406

Patrick Turner  
Attorney

September 15, 2000

**VIA TELECOPIER  
(615) 252-6363**

Henry Walker, Esquire  
Boult, Cummings, Conners & Berry  
414 Union Street, Suite 1600  
Post Office Box 198062  
Nashville, Tennessee 37219-8062

Re: Discount Communications, Inc.  
Docket No. 00-00230

Dear Henry:

Over the past several weeks I have asked that Discount identify and document all alleged billing disputes other than the directory assistance and Lifeline disputes that were the subject of this docket. In response to that request, Discount identified the following alleged disputes:

1. \$4,040 regarding credits it allegedly did not receive for certain unspecified promotional offerings (see ¶3B of the attached Proposed Settlement Agreement);
2. \$6,400 regarding "conceded Link-Up credits" (see ¶3C of the attached Proposed Settlement Agreement);
3. \$14,500 regarding "contested Link-Up credits" (see ¶3D of the attached Proposed Settlement Agreement); and
4. \$26,000 in "unconfirmed payments" (see ¶3E of the attached Proposed Settlement Agreement).

No other alleged disputes were identified by Discount.

Henry Walker, Esquire  
September 15, 2000  
Page 2

Although Discount has identified these alleged disputes, Discount has not provided BellSouth any documentation concerning these disputes. Nor has Discount arranged for any discussions between BellSouth, Discount, and Discount's bank to discuss the \$26,000 in "unconfirmed payments."

Please sent me any documentation Discount has regarding these alleged disputes, and please have someone from Discount contact Claude Morton immediately to arrange a time for BellSouth, Discount, and Discount's bank to discuss the "unconfirmed payments."

Finally, please make arrangements to have your firm remit the entire balance of the escrow account to BellSouth immediately upon the entry of the majority's written order in this docket.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patrick".

Patrick W. Turner

PWT/jem

Enclosure